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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CRYSTAL LEI et al.,

Plaintiffs and Respondents,

v.

DEMAS YAN,

Defendant and Appellant.

A155163

(San Francisco City & County
Super. Ct. No. CGC-14-541875)

MEMORANDUM OPINION¹

Demas Yan, a vexatious litigant and disbarred attorney, purports to appeal from the April 28, 2015 order (2015 order) denying his special motion to strike (Code Civ. Proc.,² § 425.16) and the June 6, 2016 (2016 order) order awarding attorney fees as sanctions (§§ 128.5, 128.7) in favor of plaintiffs Crystal Lei and her son Bryant Fu. A different panel of this division has already reviewed and affirmed these two orders. (See *Lei v. Yan* (Jan. 20, 2018, A148550) [nonpub. opn.].) In that opinion, we concluded that Yan’s special motion to strike “was a bad faith delay tactic, plain and simple.” (*Id.* at p. 12.)

Undeterred by this adverse determination, Yan filed a motion to set aside the 2015 and 2016 orders based on the trial court’s purported lack of subject matter jurisdiction to hear the special motion to strike and the related attorney fee motion. Yan’s jurisdictional

¹ This matter is properly disposed of by memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1.

² All further undesignated statutory references are to the Code of Civil Procedure.

argument was premised on the trial court's alleged failure to consider the safe harbor provisions in sections 128.5 and 128.7. There is no merit to this contention.

“Jurisdiction is but the power to hear and determine and does not depend upon the correctness of the decision made.” (*Mueller v. Elba Oil Co.* (1942) 21 Cal.2d 188, 206.) Thus, even assuming for the sake of argument that the trial court erroneously interpreted sections 128.5 and 128.7, the trial court unquestionably had the authority to hear the special motion to strike, as well as to issue attorney fees. (See *Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd.* (2010) 181 Cal.App.4th 752, 766–767.)

There is plainly no merit to Yan's challenge to two orders that have already been affirmed on appeal and his assertion of a specious jurisdictional argument. This appeal, like his earlier appeal of these same orders, appears motivated by a desire to delay or harass. “An appeal taken for an improper motive represents a time-consuming and disruptive use of the judicial process. Similarly, an appeal taken despite the fact that no reasonable attorney could have thought it meritorious ties up judicial resources and diverts attention from the already burdensome volume of work at the appellate courts.” (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) The frivolity of Yan's arguments demonstrates that the trial court properly denied his motion to set aside the 2015 and 2016 orders.

In addition to the instant appeal's substantive lack of merit, plaintiffs argue that Yan's repeated defiance of multiple court orders, including one from this court,³ disentitles him to challenge the 2015 and 2016 orders on appeal. While plaintiffs' disentitlement argument is well-founded, we decline to dismiss the appeal on this ground. Instead, we conclude that the trial court did not err and affirm the judgment.

³ We grant plaintiffs' Request for Judicial Notice, and we note that our colleagues in Division Two of this judicial district sanctioned Yan in the amount of \$9,000. (See *Li v. Yan* (Jan. 28, 2016, A140798) [nonpub. opn.].) It is undisputed that Yan has not complied with this sanctions order.

DISPOSITION

The judgment is affirmed. Respondents' motion for sanctions shall be addressed by a separate order to show cause to be issued simultaneously with this opinion.

BROWN, J.

WE CONCUR:

STREETER, ACTING P. J.

TUCHER, J.